



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOV 14 2008

Trevor Potter
1235 South Clark Street, Suite M
Arlington, VA 22202

RE: MUR 5998

Dear Mr. Potter:

On April 30, 2008, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On November 6, 2008, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Senator John McCain or John McCain for President, and Joseph Schmuckler, in his official capacity as treasurer, violated the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Peter G. Blumberg, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Shonkwiler", with a long horizontal flourish extending to the right.

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: John McCain for President and Joseph Schmuckler, in his official capacity as treasurer, and Senator John McCain

MUR: 5998

I. INTRODUCTION

The complaint in this matter involves allegations that John McCain for President and Joseph Schmuckler, in his official capacity as treasurer, ("the Committee"), and Senator John McCain accepted in-kind contributions from foreign nationals, Lord Jacob Rothschild and Nathaniel Philip Rothschild, in violation of 2 U.S.C. § 441f. See MUR 5998 Complaint.

II. FACTS

On March 20, 2008, Senator John McCain attended a fundraiser for his presidential campaign in London, England.¹ The event took place at Spencer House, a palace once belonging to the ancestors of Princess Diana, but now owned by the investment trust RIT Capital Partners plc (f/k/a Rothschild Investment Trust). Lord Jacob Rothschild, the chairman of RIT Capital Partners, and his son Nathaniel Rothschild, who is a director and major stockholder in RIT Capital Partners, attended the event. As noted above, the invitation stated that the event was taking place at the Spencer House "by kind permission of Lord Rothschild OM GBE and the Hon Nathaniel Rothschild."

Apparently due to the invitation's reference to the Rothschilds and their "permission" bestowed on the event, the complainant concluded that foreign nationals (the Rothschilds) may

¹ Senator McCain was in Europe in this period participating in a Senate Armed Services Committee delegation tour of Europe, but departed from the group to attend the fundraiser. It appears that the costs of the Senator's side trip to London, including lodging and the return flight to the U.S., were paid by the Committee. Complaint, Attachment 1.

have made in-kind contributions to the Committee in the form of catering services or other amenities. There is no allegation in the complaint that any of the funds raised by the event were contributed by foreign nationals. The invitations to the event contained warnings that only U.S. citizens or permanent residents were eligible to contribute to the Committee, and in fact, required contributors to submit a "copy of a valid and current U.S. passport that proves U.S. citizenship or permanent residency status." Response of the Committee, Exhibit 1.

Both Rothschilds submitted responses and supporting documents demonstrating that the Committee paid all of the event costs. They explained that Spencer House, a facility with eight state rooms located in London, is made available to the public for rental and that it routinely caters events such as the McCain fundraiser. Respondents state that the Committee was charged the "usual commercial rates" for this event for catering and related services. Thus, respondents deny the complaint's allegation that the use of the Spencer House and related costs were donated to the Committee. They also deny having any decision-making or management role with the fundraiser, and explain that the invitation's use of the phrase "kind permission" was a "standard polite phrase used on invitations to acknowledge the use of this site for the event and not as a statement about payment for the costs of the event." Response of Jacob Rothschild at 2; see also, Response of Nathaniel Rothschild at 1. The Committee's response notes that the "kind permission" language and the names of the Rothschilds were not on the invitation that the Committee produced at its offices. It said that it "assumes" that a different invitation, using the Rothschilds' names, was sent out by the "Campaign's London Fundraising Consultant." Response of Committee at 3. The Committee response confirms that the Rothschilds "attended the fundraiser as guests of the Campaign." *Id.* Finally, the Committee response states

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categorically that the decision to hold the London event "was made by agents of the Committee" and no decision-making authority was granted the Rothschilds. *Id.*

Spencer House invoiced the Committee for \$55,377.50 in event costs on April 29, 2008, which was forty days after the event and six days after the complaint was filed. Response of Committee, Exhibit 3. The May 2, 2008 cover memo attached to the invoice stated that "You had agreed at the outset of our discussions to pay for all charges for this luncheon" *Id.* The cover letter acknowledged the delay and asserted that it was because Spencer House "had to ascertain the validity of adding Value Added Tax to the account as you are in the United States." *Id.* The invoice billed the Committee for 126 meals at £95 each, a facility rental fee of £5,000, decorations fees totaling £4,474, beverage costs of £1,807, a dining bill for staff and security ("sandwiches") for £150 and included a £4,095 Value Added Tax. *Id.* Once the invoice was issued, the Committee paid the bill three days later, on May 5, 2008. Response of Committee, Exhibit 4.

III. ANALYSIS

The provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution. 11 C.F.R. § 100.52(d)(1). It is unlawful for a foreign national, directly or indirectly, to make a contribution or donation of money or other thing of value, or make an expenditure in connection with a Federal, State, or local election. 2 U.S.C. § 441e. It is also unlawful for a person to solicit, accept, or receive a contribution or donation from a foreign national. *Id.* A "Foreign national" is an individual who is not a citizen of the United States or a national of the United States and who is not lawfully admitted for permanent residence. *Id.*

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Commission regulations implementing 2 U.S.C. § 441e prohibit foreign nationals from participating in the decisions of any person involving election-related activities. See 11 C.F.R. § 110.20(i). Such participation in decisions includes directing, dictating, controlling, or directly or indirectly participating "in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with elections for any Federal, State, or local office or decisions concerning the administration of a political committee." *Id.* This broad prohibition encompasses foreign national involvement in the management of any political committee, and its decisions regarding its receipts and disbursements in connection with Federal and non-Federal elections. Explanation and Justification for Regulations on Contribution Limitations and Prohibitions, 67 Fed. Reg. 69946 (Nov. 19, 2002).

A commercial vendor is any person who provides goods or services to a candidate or political committee and whose usual and normal business involves the sale, rental, lease or provision of those goods or services. 11 C.F.R. § 116.1(c). A commercial vendor, whether or not it is a corporation, may extend credit to a candidate or political committee provided that the credit is extended in the vendor's ordinary course of business and the terms of the credit are similar to the terms the vendor observes when extending a similar amount of credit to a nonpolitical client of similar risk. 11 C.F.R. §§ 116.3(a) and (b). If a creditor fails to make a commercially reasonable attempt to collect the debt, a contribution will result. 11 C.F.R. § 100.55

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It appears that Spencer House is a venue whose usual and normal business is providing facilities for events such as fundraisers, and therefore it is a commercial vendor under the Commission regulations. In this case, the submitted invoices and accompanying narrative explanations from the respondents seem to demonstrate that a standard commercial rate was charged to the Committee for the use of this facility, and that the billed amount was paid. See 11 C.F.R. § 100.52(d)(1) (contribution results when less than the usual and normal charge is sought by vendor). Thus, there does not appear to have been any in-kind contribution of goods and services as alleged by the complaint resulting from the amount charged to and paid by the Committee. Further, the Committee and the Rothschilds all denied that the Rothschilds had a decision-making role in the event, and there is no information to the contrary; thus the complaint's allegation based on an application of 11 C.F.R. § 110.20(i) also fails.

The May 2, 2008 letter from Spencer House to the Committee stated that the Committee "had agreed at the outset of our discussions to pay for all the charges for this luncheon" and notes that the reason for the delay in sending the invoice for the charges was that the Spencer House needed to consult with "advisors" to ascertain whether Value Added Tax should be added to the charges since the Committee is located in the United States. Response of Committee, Exhibit 3.² The invoice itself appears to be quite comprehensive and includes charges for meals, drinks and ancillary services such as "sandwiches" for staff and security, as well as the tax. *Id.* While the fact that the invoice was issued only after the complaint was filed could raise a question as to the commercial reasonableness of Spencer House's extension of credit to the

² The Value Added Tax or VAT is a form of sales tax prevalent in many European countries. The tax is assessed on the increase in value at each production stage of a product and at distribution. Black's Law Dictionary 1499 (8th Ed. 2004).

Committee and efforts at debt collection, *see* 11 C.F.R. § 100.55, the overall circumstances do not support complainant's suspicions. The respondents have provided an explanation for the delay (the VAT tax concern), and there is no information to suggest other reasons for the delay. Equally important, the invoice was issued a little over 30 but less than 45 days after the event, and was paid immediately. Given the relatively short delay, and the explanation for the delay, we conclude that the circumstances presented do not give rise to an in-kind contribution.³

Accordingly, the Commission finds no reason to believe that John McCain for President, and Joseph Schmuckler in his official capacity as treasurer, and Senator John McCain violated the Act with respect to this matter.

³ In past cases where the Commission determined that in-kind contributions resulted from extensions of credit, the cases involved much longer delays in payment that did not appear commercially reasonable. *See* MUR 5396 (Bauer for President 2000) (respondents enter into conciliation agreement to resolve, *inter alia*, 441a and 441b violations resulting from extension of credits from three different vendors totaling over \$700,000 and owed for periods between 105 to 235 days); MUR 5047 (Clinton/Gore '96) (the Commission finds reason to believe that committee and two of its vendors, including a hotel that catered a campaign event, violated section 441b by accepting or making illegal corporate extensions of credit totaling over \$900,000 that were unresolved for four months or longer, but takes no further action because the debts had been paid in full and some debt collection activity occurred).